THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE DR. JUSTICE G. YETHIRAJULU

WRIT APPEAL No. 1391 OF 2005

Date: 09.09.2005

Between:

The Commissioner & Director of School Education & another.

…. Appellants

and

Smt.V.D.Dhanalakshmi & another. …. Respondents.

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JUDGMENT: *(per the Hon'ble Sri Justice B. Prakash Rao)*

Heard the learned Government Pleader for School Education and Sri Rupendra Mahendra, learned counsel appearing for the contesting respondent. At their request, the main appeal itself is taken up for disposal.

In this appeal, under Clause 15 of the Letters Patent Appeal, the appellants seek to assail the order, dated 09.09.2004, allowing W.P.No.3728 of 1997 filed at the instance of the first respondent.

In the writ petition, the first respondent sought to assail the proceedings dated 28.12.1996 and 09.01.1997 passed by the appellants herein respectively. The main case of the first respondent is to the effect that she has been selected as a Teacher in 1998 by the properly constituted Selection Committee, however, as the posts were not admitted to grant-in-aid, the management has shown breaks in service during the summer vacation and on that ground the second respondent rejected the proposal for approval of her appointment and also negatived the claim forwarded by the third respondent for her admission against the grant-in-aid post. The main objection raised on behalf of the appellants is that there is break in service of the first respondent and hence considering her appointment for approval, does not arise.

The learned Single Judge, after taking into consideration various submissions made across the Bar on behalf of both the parties and especially placing reliance upon the principles laid down by the Division Bench of this Court in *K.C.High School, Guntur v. Govt. of A.P.,* held that merely because

there was break in service of the first respondent during summer vacation, that would not constitute any disqualification, and therefore allowed the writ petition and set aside the impugned proceedings. It is further directed to consider the case of the first respondent as against the grant-in-aid post with effect from the date from which the grant-in-aid was sanctioned to the third respondent-institution under G.O.Ms.No.411, dated 10.11.1994.

The learned Government Pleader appearing on behalf of the appellants submits that having regard to the basic fact that there was no approval to the appointment of the first respondent, which was admittedly un-aided post, the question of considering her case for the grant-in-aid post does not arise.

On the other hand, the learned counsel for the first respondent sought to sustain the order under appeal, on the ground that neither the above said plea was taken in the writ petition nor that was the ground to reject the claim of the first respondent.

Having regard to the submissions made on behalf of both the parties and having perused the material available on record, it is clear that there is no dispute to the fact that the first respondent was appointed regularly, by following the due procedure, in 1998 and due recommendation was also made to the authorities for the approval of her appointment and the same is still pending. No orders have been passed thereon, as yet. Meanwhile, having regard to the vacancy arising in the grant-in-aid post, the first respondent requested to regularize her post. No doubt, on behalf of the appellants, in the counter-affidavit filed in the writ petition, the objection taken was in regard to the break in service. However, the fact remains and which is not denied by the learned counsel for the appellants that there was no approval as such granted by the authorities concerned. Further, it has to be noted that at the time of initial appointment in 1998 itself, proposals sent by the institution to the authorities have been kept pending and no orders have been passed thereon. On the face of it, having kept such proceedings pending and without passing any orders, either granting or rejecting such approval, it is not open for the authorities to

raise any objection in regard to the consideration of the entitlement of the first respondent for regularization. The approval, as such, though may not be a formal one, but certainly a requirement for any case which is taken up for consideration in grant-in-aid post.

In the circumstances, We deem it more appropriate to direct the authorities concerned to pass orders in regard to the approval of the appointment of the first respondent, in pursuance of the recommendations which have already been made by the third respondent-Institution, duly following the directions given by the learned Single Judge in the writ petition.

Subject to the above direction, the writ appeal is dismissed.

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(B.PRAKASH RAO.J)

(DR.G.YETHIRAJULU.J)

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Dt.09.09.2005